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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

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PT PAN BROTHERS TBK AND GEOFFREY

Main Case No.

8

DAVID SIMMS,

22-10136-mg

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Debtors.

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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March 8, 2022

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9:50 AM

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B E F O R E:

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HON. MARTIN GLENN

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CHIEF U.S. BANKRUPTCY JUDGE

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Hearing Using Zoom for Government RE: Motion for (I)

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Recognition of Foreign Nonmain Proceeding, (II) Recognition of

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Foreign Representative, (III) Recognition of Sanction Order and

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Related Scheme, and (IV) Related Relief and Additional

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Assistance Under Chapter 15 of the Bankruptcy Code. (Doc. ## 1

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to 5, 9 to 11)

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ALSO PRESENT:

GEOFFREY DAVID SIMMS, Foreign Representative of the  
Debtor

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Glenn. We're  
3 here in PT Pan Brothers Tbk, 22-10136-mg. It is the foreign  
4 representative's motion for a recognition, which is filed at  
5 ECF docket number 2.

6 Who is going to begin?

7 MR. BLOOM: Good morning, Your Honor. Mark Bloom on  
8 behalf of the foreign representative. With the Court's  
9 pleasure, I will begin.

10 THE COURT: Go ahead, Mr. Bloom. Nice to see you.

11 MR. BLOOM: And to see you as well, Your Honor.

12 If I may, I'd like to begin by thanking the Court and  
13 the staff for accommodating our request for a morning hearing.  
14 The foreign representative, Mr. Simms, and our legal expert,  
15 Mr. Chua, are in Indonesia and Singapore, respectively, and so  
16 they are on the other side of the world and at the other end of  
17 the clock. So thank you to the Court and to your chambers for  
18 accommodating our request.

19 THE COURT: I certainly welcome them and appreciate  
20 their participation by Zoom. Go ahead, Mr. Bloom.

21 MR. BLOOM: Thank you, Judge. So we are here, as the  
22 Court referenced, pursuant to the scheduling order, which in  
23 addition to today's hearing set a deadline of March 1 for  
24 responses and objections to our recognition motion. No such  
25 responses or objections have been received by that deadline, or

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1 for that matter, since. We filed a certificate of no  
2 objection, pursuant to the Local Rules, on March 3rd. That is  
3 docketed as ECF number 11.

4 Especially in light of the absence of any response or  
5 objection, perhaps the Court might want me to explain what we  
6 did regarding notice of this hearing.

7 THE COURT: Yes, please. Go ahead.

8 MR. BLOOM: At ECF number 10 is our certificate of  
9 service, which reflects the service of the petition, the  
10 recognition motion and accompanying declarations, the  
11 scheduling order and the related documents, all within the time  
12 provided in the scheduling order. I can assure the Court that  
13 in effectuating that service we made sure to pay strict and  
14 careful adherence to the scheduling order. In particular, we  
15 used the same information agent who provided notice and  
16 documents relating to the scheme proceeding in the same manner  
17 as the scheme.

18 Exhibit A-1 to our certificate of service is an email  
19 exchange with that information agent, Morrow Sodali, reflecting  
20 their distribution of the papers that I've mentioned in this  
21 case and posting on the scheme website, as described in  
22 paragraph 37 of Mr. Chua's declaration.

23 The notice and solicitation efforts undertaken by the  
24 information agent in connection with the scheme were successful  
25 in obtaining both the widespread participation of each of the

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1 four classes of scheme creditors and the overwhelming support  
2 of those participating, and so we believe that proceeding in  
3 the same manner here was reasonably calculated to effectuate  
4 notice of today's hearing and the attendant deadlines, in  
5 particular with an eye toward Bankruptcy Rule 2002(p).

6 We made special provision for service on parties-in-  
7 interest at foreign addresses where we had no emails for those  
8 parties. We served them by DHL Express Worldwide courier, and  
9 in particular I'm referring to parties in the UK, in  
10 Luxembourg, and in Singapore.

11 For those reasons, we believe that notice of today's  
12 hearing is good and sufficient, and we take it as a positive  
13 sign that we've received no responses or objections on the  
14 record.

15 In terms of how we would propose to proceed today, of  
16 course taking whatever guidance and direction Your Honor may  
17 wish to offer, we would propose to offer a somewhat brief  
18 presentation to the Court based upon the two declarations and  
19 the related exhibits in the record.

20 Those declarations, first, are those of Mr. Simms, ECF  
21 number 3. Mr. Simms, as mentioned, is the foreign  
22 representative, who also served as chairman of the Singapore  
23 scheme. There are three exhibits attached to his declaration.

24 Mr. Chua is our Singapore legal expert. His  
25 declaration is in the record as ECF number 4 and attaches to it

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1 a copy of the Singapore Insolvency, Restructuring and  
2 Dissolution Act of 2018, with which I know the Court is  
3 familiar, and I understand that it is locally referred to as  
4 the IRDA, I-R-D-A.

5 As the Court has noted, both of the declarants are  
6 present in the courtroom by Zoom, and each is prepared to  
7 affirm to the Court that if called to testify, his direct  
8 testimony under oath would be as set forth in the declarations.

9 So with regard to whatever procedures Your Honor may  
10 deem appropriate, I propose to move the admissions of the  
11 declarations into evidence, ask the Court to accept those in  
12 lieu of live direct testimony, and perhaps, at the end of my  
13 presentation, I can submit them for cross-examination by the  
14 Court, if that pleases Your Honor.

15 THE COURT: Why don't you offer them? It is my  
16 practice typically to take direct testimony in written form in  
17 a declaration, so why don't you -- well, I take it you're  
18 offering the Simms declaration, ECF 3, and the Chua  
19 declaration, ECF number 4; is that correct?

20 MR. BLOOM: That is correct, Your Honor.

21 THE COURT: All right. Since there have been no  
22 objections filed and no one else really appearing --

23 Does anybody object to the Court admitting those  
24 declarations in evidence? All right. Hearing none, the Simms  
25 declaration, ECF 3 with its three exhibits, and the Chua



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1 declaration, ECF docket number 4 with the Singapore  
2 Restructuring Act attached, are admitted into evidence for  
3 purposes of this hearing.

4 Go ahead, Mr. Bloom.

5 (Declaration of Mr. Simms was hereby received into  
6 evidence as Debtors' Exhibit, as of this date.)

7 (Declaration of Mr. Chua was hereby received into evidence  
8 as Debtors' Exhibit, as of this date.)

9 MR. BLOOM: Thank you, Your Honor. Looking to make  
10 what I hope will be an appropriate presentation without overly  
11 burdening the Court, based upon the fact that we've created, I  
12 believe, a fairly extensive record, I'd like to proceed as  
13 follows.

14 As mentioned, we seek recognition of the Singapore  
15 scheme proceeding as a foreign nonmain proceeding of Mr. Simms  
16 as the foreign representative. And we seek related relief and  
17 additional assistance in aid and implementation of the  
18 Singapore scheme that was confirmed by the sanction order of  
19 the Singapore court entered on January 17th of this year. That  
20 is attached as Exhibit A to our Chapter 15 petition, which of  
21 course is ECF number 1.

22 THE COURT: Let me ask you --

23 MR. BLOOM: Yes, sir. Yes, Your Honor.

24 THE COURT: I would appreciate just some further  
25 background about the status of the Singapore proceeding,

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1 whether any proceedings -- has an Indonesian proceeding seeking  
2 recognition of the Singapore scheme been filed, and what the  
3 status of that is. But just give me the background, if you  
4 would.

5 MR. BLOOM: Sure. Sure. Your Honor, the decision was  
6 made here in consultation with creditors for a great many  
7 reasons that include the flexibility of the Singapore laws, the  
8 worldwide respect enjoyed by the Singapore courts, and frankly,  
9 the preferences of a lot of the significant creditors and the  
10 rating agencies that were involved here to proceed with a  
11 scheme in Singapore in lieu of a PKPU proceeding in Indonesia.

12 There was a creditor that initiated a PKPU proceeding  
13 in Indonesia last year. That was among several steps that  
14 prompted the filing of the moratorium applications in the  
15 Singapore court that led the Singapore court, after determining  
16 that the companies had a substantial connection with Singapore,  
17 to grant the moratorium, and the PKPU proceeding was then  
18 dismissed.

19 I can defer to Mr. Chua the Court's question regarding  
20 whether there is any ongoing effort or contemplated effort to  
21 seek recognition of the Singapore scheme proceeding in the  
22 Indonesian court, noting for the Court that courts in Indonesia  
23 are not terribly quick to grant international comity or  
24 recognition to foreign judgments.

25 If I may ask Mr. Chua to respond to the question about

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1 intentions regarding a recognition proceeding in Indonesia?

2 THE COURT: Please. That would be good.

3 Mr. Chua?

4 MR. CHUA: Thank you, Your Honor. There are no plans  
5 at the moment, apart from the present proceedings before Your  
6 Honor, to have any other recognition proceeding in any other  
7 jurisdictions. So the only recognition proceeding that's been  
8 contemplated and proceeded with at the moment is these current  
9 proceedings.

10 THE COURT: Is there any litigation pending in  
11 Indonesia seeking to enforce any creditors' rights in  
12 Indonesia?

13 MR. CHUA: At present, to acknowledge, there isn't.  
14 As my learned friend, Mr. Bloom, explained, there was a PKPU  
15 application that was filed by a minority creditor that was  
16 dismissed by the Indonesian courts on account of, amongst other  
17 things, the Singapore proceedings and the fact that there was a  
18 moratoria in place.

19 Subsequently, the same minority creditor filed for a  
20 bankruptcy proceeding in Indonesia. Likewise, those  
21 proceedings were dismissed and not allowed.

22 So as of today, to our knowledge, there are no live  
23 and ongoing proceedings in Indonesia or elsewhere.

24 THE COURT: Did that minority creditor make an  
25 appearance in the Singapore scheme proceeding?

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1 MR. CHUA: That minority creditor did not. That said,  
2 that creditor did vote in the voting for the present scheme,  
3 and in fact, that creditor voted in favor of the present  
4 scheme.

5 THE COURT: All right. In most places, that would be  
6 considered an appearance in submission to the jurisdiction of  
7 the Singapore court on the scheme. But obviously that's not  
8 for me to decide, if that ever --

9 All right. Thank you very much, Mr. Chua.

10 MR. CHUA: Thank you, Your Honor.

11 THE COURT: Mr. Bloom?

12 MR. BLOOM: Just continuing very briefly with a bit of  
13 history about the debtor. Pan Brothers and its subsidiaries,  
14 collectively known as the Pan Brothers Group with subsidiaries  
15 and joint ventures, operate under a vertically integrated  
16 business model with a multinational scope of operations. They  
17 are one of India's largest garment manufacturers, with exports  
18 literally all over the world; customers including many of the  
19 leading international brands, including Adidas, Uniqlo, The  
20 North Face and Polo Ralph Lauren, just to name a few.

21 In order to support those activities, Pan Brothers  
22 maintains offices and conducts substantial business activities  
23 in key countries around the world, which, of course, brings us  
24 to Singapore, which is one of the most essential of those key  
25 countries. As described extensively in Mr. Simms' declaration,

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1 paragraphs 19 through 31, three of the debtors' majority owned  
2 subsidiaries are incorporated with resident directors in  
3 Singapore. Singapore effectively serves as the hub for the Pan  
4 Brothers Group worldwide export operations and provides  
5 essential support for the manufacturing operations in  
6 Indonesia.

7           The key business operations and decisions in respect  
8 of product sourcing and export sales are made at the  
9 representative offices, three of them in Singapore. Those  
10 offices account, I am told, for eighty-five percent of the  
11 aggregate group sales in the years 2017 through 2020. The  
12 active conduct of business by employees at these offices  
13 requires compliance with an array of Singapore labor and  
14 employment laws, as well as tax filings and other reports.

15           Notably, the New York law governed the existing notes  
16 that are one of the three tranches of debt covered by the  
17 scheme, are traded on the Singapore Exchange. These same  
18 factors led the Singapore court to find that the debtor had the  
19 required substantial connection to Singapore as a predicate for  
20 the grant of the moratorium and acceptance of the scheme  
21 proceeding.

22           Giving due regard to these extensive operations and  
23 economic presence in Singapore, the undeniable fact remains  
24 that the debtors' COMI is in Indonesia. And so for that  
25 reason, it follows that in this Chapter 15 case we offer no

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1 pretense of a COMI in Singapore, and accordingly, seek only  
2 foreign nonmain recognition of the Singapore scheme proceeding.

3 We seek that recognition accompanied by the  
4 discretionary relief under Section 1521 that Your Honor has  
5 held in recent decisions in the *Servicos de Petroleo*  
6 Constellation case, which I understand is referred to among the  
7 participants as the QGOG case or cases, but I'm not exactly  
8 certain why.

9 THE COURT: I just call them Constellation.

10 MR. BLOOM: Constellation it is then, Your Honor. But  
11 as the Court noted there, based upon an interpretation of  
12 Section 1521, there really is no reason why the discretionary  
13 relief that is available and that can be granted by a court  
14 upon foreign main recognition cannot be granted on foreign  
15 nonmain recognition. We believe that that is equally true with  
16 respect to additional assistance under Section 1507, and I  
17 mention that specifically because Your Honor has held in a  
18 series of cases, beginning with *Metcalf* and *Mansfield*, that  
19 the more proper vehicle through which to obtain the approval of  
20 third-party releases that were approved as part of a foreign  
21 reorganization plan is the additional assistance provision of  
22 1507, rather than the discretionary relief provision of 1521.

23 In respect of the decision to go to Singapore and how  
24 it facilitated and served the interests of the debtor here, the  
25 capital structure of the debtor and its affiliates lent itself

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1 well to the Singapore scheme process, in which only scheme  
2 creditors were affected. There were three tranches of funded  
3 debt: the existing notes, which were one class in the scheme;  
4 the syndicated facilities, which were a second class in the  
5 scheme; and the bilateral facilities, for which the creditors  
6 were divided into two classes, one for active bilateral  
7 facilities and the other for nonactive facilities.

8 Unlike an Indonesian PKPU process, the Singapore  
9 scheme is designed and was effectuated here, so as to have no  
10 impact on vendors, creditors, customers, employees or  
11 governmental authority authorities in the many countries in  
12 which the debtor has operations.

13 The voting requirements for acceptance under Singapore  
14 law are similar to those with which the Court is familiar from  
15 other systems around the world. As Mr. Chua's declaration  
16 reflects in paragraph 12, acceptance requires the affirmative  
17 vote of three-quarters in value and a majority in the number of  
18 scheme creditors in each voting class; here, the four classes,  
19 as I've mentioned.

20 At paragraph 37 of Mr. Chua's declaration we've  
21 inserted a chart that reflects that the scheme was accepted  
22 with the overwhelming support of scheme creditors in each of  
23 the four classes: 100 percent of the active bilaterals, more  
24 than 92 percent of the nonactive bilaterals and syndicated  
25 facilities, and importantly, more than 85 percent voting of the

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1 thirty-eight -- I'm sorry -- of the noteholders who accepted 95  
2 percent -- thirty-six of thirty-eight voting, holding 95.75  
3 percent of the outstanding notes, voted to accept the class.  
4 The scheme.

5 It is the existing notes, Your Honor, that are the  
6 main point of connection with the U.S. Candidly, as far as any  
7 of us are aware, there really is no U.S. connection in  
8 connection with respect of the syndicated and bilateral  
9 facilities. We're not aware of any U.S. participants. None of  
10 the documents in those facilities are governed by New York or  
11 any other U.S. law.

12 So what really brings us here, not surprisingly, is  
13 the existing notes, which as explained in Mr. Simms'  
14 declaration, are governed by New York law, provide for  
15 jurisdiction in the federal and state courts of New York, and  
16 are backed by parent and subsidiary guaranties that contain  
17 similar jurisdiction and choice of law provisions, as does the  
18 existing notes indenture.

19 So specifically, we, with the existing notes in mind,  
20 but not by way of limitation, we seek recognition, relief and  
21 additional assistance under Chapter 15, in order to ensure that  
22 the scheme can be implemented and given effect in the U.S. The  
23 restructuring of the notes requires that we seek a permanent  
24 injunction in respect of any enforcement action, in respect of  
25 the existing notes in the courts of New York, where



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1 jurisdiction lies.

2 I also should mention to the Court that it's a  
3 condition precedent to the effectiveness of the scheme that we  
4 obtain here, in advance of the March 31, 2022 long stop date, a  
5 final order granting recognition, relief and additional  
6 assistance as we seek in the recognition motion. We submitted  
7 a proposed form of order to the Court as Exhibit A to that  
8 motion, and we offer no changes to that form of order today.

9 In light of our particular focus on the existing  
10 notes in filing this Chapter 15 case, if the Court please, I'll  
11 limit the remainder of my brief description of the terms of the  
12 scheme to address only the treatment of the existing notes, as  
13 explained more fully in Mr. Simms' declaration, specifically  
14 paragraphs 27, 54(b) and 67(a).

15 The existing notes will be replaced with amended notes  
16 with an extended maturity date that is designed so as to align  
17 better with the financial projections that were furnished to  
18 the scheme creditors in the scheme explanatory statement. The  
19 parent and subsidiary guaranties will be released as to the  
20 existing notes, but will carry over to the amended notes in the  
21 sense that the parent and the subsidiary guarantors on the  
22 existing notes will similarly be obligated on the amended  
23 notes. The amended notes also will continue to be listed on  
24 the Singapore Exchange, and noteholders will have materially  
25 the same rights against the debtor and the other guarantors

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1 under the amended notes guaranties.

2 So really, Your Honor, other than an adjustment of the  
3 interest payments to align with the cash flow forecast and an  
4 extension of the maturity date, there is no change in the  
5 noteholders' principal economic and legal rights against the  
6 debtor. No haircut, no reduction in principle for the  
7 noteholders on the existing notes, nor, for that matter, on any  
8 of the existing facility is encompassed in the scheme. As our  
9 papers attempt to present to the Court, this restructuring was  
10 negotiated plain and simple by cash flow issues and not any  
11 loss or destruction of value in the Pan Brothers Group  
12 enterprises.

13 The third-party releases of the debtors' affiliates,  
14 specifically the issuer and the subsidiary guarantors in  
15 respect of their obligations relating to the existing notes and  
16 facilities, is described in Mr. Chua's declaration at paragraph  
17 65 through 71. Those releases are limited to the scheme claims  
18 under the existing notes and existing facilities in  
19 consideration of the rights and remedies provided to the scheme  
20 creditors under the scheme in the form of the amended notes and  
21 other documents to be issued on the other restructured  
22 obligations.

23 The releases were to be effectuated by the execution  
24 of certain deeds of release, which, as described in paragraph  
25 66 of Mr. Chua's declaration, are to be effective under the

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1 governing law of each obligation. In the case of the existing  
2 notes, that, of course, is the law of New York.

3 Mr. Chua's declaration goes on to explain, at  
4 paragraph 67 through 71, that third-party releases are  
5 permissible under Singapore law, were clearly disclosed in the  
6 scheme documents and accepted by scheme creditors. And so I  
7 would describe those third-party releases as a corollary  
8 feature of the replacement of the existing notes with the  
9 amended notes on which the third parties will assume liability  
10 in the same manner as with respect to the existing notes.

11 Turning briefly, if I may, to the legal analysis in  
12 support of the recognition, relief, and additional assistance  
13 we seek, first and foremost, within the Second Circuit, we  
14 would point out that the debtor satisfies the eligibility  
15 requirements under Section 109 and the Barnet decision. It  
16 maintains property in the United States in the form of an  
17 undrawn retainer in the Baker & McKenzie trust account in New  
18 York, maintained at a bank in this district. So we satisfy the  
19 venue requirements we earned as well. For good measure, the  
20 existing notes and related guaranties and the indenture are  
21 governed by New York law and contain New York jurisdictional  
22 clauses, thus satisfying the test articulated by Your Honor in  
23 Berau Resources and other cases, and followed recently by Judge  
24 Lane in the PT Bakrie Telecom case as well.

25 Turning next to the elements of recognition under

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1 Sections 1515 through 1517, while we deal with them in some  
2 detail at pages 17 through 30 of our motion, I would simply  
3 highlight for the Court and present that Section 1515 is  
4 satisfied by Exhibit A to our petition, which is the January  
5 17, 2022 sanction order of the Singapore court bearing the  
6 apostille of that court, and thus satisfying the 1515(b)(1)  
7 requirement as evidence of existence of the foreign proceeding,  
8 and specifically, the appointment of Mr. Simms as the foreign  
9 representative for the express purpose of proceeding with this  
10 Chapter 15 case. We believe that the sanction order, as  
11 submitted, entitles the foreign representative to the  
12 presumptions of Section 1516(a) and (b), and satisfies the  
13 requirements for recognition as a foreign nonmain proceeding  
14 under Section 1517(a) and (b)(2).

15 On the point of subsection (b)(2) we believe that, as  
16 mentioned in the Simms' declaration, the debtor has an  
17 establishment in Singapore at which he conducts and engages in  
18 substantial nontransitory economic activity within the meaning  
19 of Section 1502, as I have described.

20 Turning, if I may, to relief under Section 1521, the  
21 grant of that relief, of course, is discretionary with the  
22 Court upon recognition of a foreign proceeding. And as  
23 mentioned, Your Honor has held in Constellation that a foreign  
24 proceeding that is granted foreign nonmain recognition can be  
25 entitled to the same discretionary relief as if it had been

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1 granted a foreign main proceeding.

2 Our motion seeks, and we believe, lays an adequate  
3 predicate for the grant of relief under the various subsections  
4 of Section 1520(a) including, as I have mentioned, a permanent  
5 injunction to support implementation of the scheme, as this  
6 Court has issued previously in *Avanti*, *Olinda Star*, and *Ocean*  
7 *Rig*. The cases, among others, that we cite at paragraph 73  
8 through 74 of our recognition motion, where we also address and  
9 satisfy the injunction standard applicable in the Second  
10 Circuit.

11 We don't contemplate any further proceedings before  
12 the Court. We propose to seek a quick closing of the case  
13 after the recognition order and implementation of the scheme,  
14 but I will get to that, if necessary, in a moment.

15 With respect to the relief we request under Section  
16 1521, I should mention Section 1522 and our view that the grant  
17 of the proposed relief satisfies the requirement of 1522 that  
18 the interests of creditors and other interested parties be  
19 sufficiently protected. As mentioned, only scheme creditors  
20 are affected. They received extensive notice of the scheme  
21 proceedings dating back to the circulation of an initial term  
22 sheet as early as June of 2021. Mr. Chua's declaration at  
23 paragraph 32 through 35 reflects the efforts of the information  
24 agent, as supplemented by publication, to ensure that the  
25 scheme materials, at various stages, were submitted and

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1 circulated widely to scheme creditors and made available on a  
2 website, all in compliance with the statutory notice  
3 requirements of the Singapore IRDA, and leading, as mentioned,  
4 to the substantial participation by scheme creditors in the  
5 scheme, as well as their overwhelming acceptance in all four  
6 classes.

7           On the issue of third-party releases, just to touch on  
8 the legal standard of Section 1507, as mentioned previously and  
9 described in the Chua declaration, the releases were fully  
10 disclosed in the submissions, the explanatory statement and  
11 related scheme documents. And they are available, Mr. Chua  
12 indicates, and would elaborate further, under Singapore law.

13           Mr. Chua can supplement his declaration and confirm on  
14 the record his view that a Singapore court would continue to  
15 uphold the concept of third-party releases as recognized in the  
16 Singapore Court of Appeals pre-IRDA decision of Daewoo  
17 Singapore v. CEL Tractors. Mr. Chua relies on that case for a  
18 series of other propositions at paragraphs 47 to 50 of his  
19 declaration and can confirm today that based upon review of  
20 that case he believes that a Singapore court would continue to  
21 uphold the concept of third-party releases as available in a  
22 scheme proceeding under the IRDA.

23           The overwhelming acceptance of all four classes of the  
24 scheme creditors, we think, also supports approval of the  
25 third-party releases under the scheme as a matter of additional

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1 assistance under Section 1507. And I hasten to add there that  
2 as with other cases in which similar additional assistance has  
3 been granted under Chapter 15, all of those votes and all of  
4 those requisite majorities were obtained without any votes of  
5 the insiders of the debtor, as in Metcalfe, Sino-Forest and the  
6 other cases that we cite at paragraph 80 through 81 of our  
7 recognition motion. We also analyze, to the extent relevant,  
8 the 1507(b) factors at paragraphs 84 through 91 of the motion.

9 At this point, the only item that would be left for us  
10 to address, unless the Court has any questions about this part  
11 of the presentation, is the streamlined procedure that we  
12 proposed aspirationally, in the hope that we would reach this  
13 day as we have, without any response or objection having been  
14 filed. If the Court would care to hear about that, I'll turn  
15 to Mr. Solow to address it, but first ask if Your Honor has any  
16 questions for me regarding any of the presentations that I've  
17 offered.

18 THE COURT: Thank you very much, Mr. Bloom. Actually,  
19 I don't have questions. First, I want to compliment you and  
20 your colleagues. I think the motion, which is at ECF docket  
21 number 2, and the Simms' declarations are extremely thorough in  
22 explaining, first in the memorandum, the Chapter 15 law in the  
23 United States and in describing, in the Simms' declarations,  
24 the proceedings and the various provisions of the existing  
25 notes that are being modified. So unless there's anything else

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1 you want to say now, I'm certainly prepared to go ahead and  
2 rule. Is there anything else you wanted to add, Mr. Bloom?

3 MR. BLOOM: Only a thank you. And if Your Honor has  
4 any concerns about us seeking to close the case by way of this  
5 motion in lieu of a formal final report on notice of  
6 presentment, Mr. Solow can address those.

7 THE COURT: Okay. No, I don't. Actually, I would  
8 comment. I periodically go back and look at my calendar and  
9 find that the counsel in Chapter 15 cases are great at opening  
10 them but very bad at closing them. And I find cases -- I don't  
11 have any at the present time, but in the past I have found some  
12 old cases that just sit there after essentially having been  
13 completed. So once the relief has been sought, and the scheme  
14 has become effective, I'm all in favor of having the Chapter 15  
15 case closed. On one or two cases I've had to reopen Chapter 15  
16 cases because of subsequent developments in the country, and  
17 certainly that can be done.

18 So let me go ahead and make some brief comments.  
19 Again, because no objection, timely notice and appropriate  
20 notice was given of this proceeding, opportunity for any  
21 parties to appear and file any responses, no objections or  
22 responses having been filed. As I indicated, I think the  
23 motion papers and the Simms' declaration are extremely  
24 thorough, and Mr. Chua's declaration regarding the Singapore  
25 proceeding, Singapore law.



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1 I guess one question. I was not familiar -- I know  
2 many of the judges in Singapore from prior proceedings and also  
3 having spoken at several conferences in Singapore, but I wasn't  
4 familiar with the judge here. Who is the judge?

5 Mr. Chua, maybe you can address that?

6 MR. CHUA: Yes, Your Honor. We appeared before  
7 Justice Philip Jeyaretnam, so Judge Philip Jeyaretnam. Judge  
8 Jeyaretnam is a fairly new judge on the Singapore bench. Prior  
9 to that, he was senior partner at the Singapore high-up with  
10 Dentons. Oh. Dentons Rodyk & Davidson in Singapore.

11 THE COURT: And you'll soon have Judge Sontchi from  
12 Delaware joining the Singapore court, another great addition to  
13 what is already an excellent court. So appreciate that.

14 So let me go ahead --

15 MR. CHUA: Yes.

16 THE COURT: And thank you very much, Mr. Chua. Let me  
17 go ahead and make some brief comments in support of the ruling.  
18 I am granting the application. I'm granting recognition of the  
19 Singapore proceeding as a foreign nonmain proceeding, and as I  
20 have in prior nonmain proceedings, the same relief that can be  
21 granted in a main proceeding can be granted as discretionary  
22 relief in a nonmain proceeding. So I am granting enforcement  
23 of the Singapore scheme, including the third-party releases  
24 under both 1521 and 1507.

25 So first, with respect to eligibility to file. There

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1 obviously is a split in authority in the United States under  
2 Section 109(a) of the Bankruptcy Code. The Barnet decision  
3 from the Second Circuit says that 109(a) applies in Chapter 15  
4 cases. There are other district courts and bankruptcy courts  
5 that disagree with that conclusion, but obviously I am bound by  
6 the Barnet decision.

7 In terms of property in the United States, yes, in  
8 prior cases, I, like other judges in New York and Delaware and  
9 elsewhere, have concluded that the undrawn retainer in New York  
10 is sufficient property. But as I held in Berau Capital and  
11 have applied in other cases, the fact that the debtor property  
12 includes the intangible property rights under the various  
13 indentures. The Simms' declaration at pages 4 and 23 indicate  
14 that the existing notes -- existing notes indenture and related  
15 parent guaranty and subsidiary guaranties are governed by New  
16 York law and subject to the jurisdiction of the New York  
17 courts.

18 As I held in Berau, that satisfies the property in the  
19 United States test. Indeed, it's most frequently the reason  
20 that recognition and enforcement is sought in the United  
21 States. Indenture trustees of New York law governed law debt  
22 with New York submission to jurisdiction clauses, want the  
23 approval of a court in the United States to the modification of  
24 existing debt obligations. I think that's one of the main  
25 reasons that we see so many cases, Chapter 15 cases in New

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1 York, because it modifies New York law governed debt. So both  
2 because of the retainer and because of the indentures and  
3 related documents that provide for New York governing law  
4 109(a) is clearly satisfied.

5 So with respect to this foreign debtors' status, as in  
6 Singapore for a nonbank proceeding, obviously, the Singapore  
7 court applied its substantial connection test. And one of the  
8 things that I've often pondered is the relationship between the  
9 substantial connection test -- it's applied in Singapore, it's  
10 applied in the UK -- and how that meshes with the establishment  
11 requirement for nonmain proceedings in Chapter 15. I think,  
12 while phrased differently, at least as applied in Singapore,  
13 it's largely consistent with the case law in the United States  
14 with respect to determining whether something qualifies as a  
15 foreign main proceeding. I think it's unnecessary for me to go  
16 further with that point here. In the Constellation case, at  
17 613 B.R. 502, 503, 510, 512 and 513, where I recognized the  
18 COMI of Constellation's Luxembourg parent, I, in that case,  
19 concluded -- I looked beyond the activities of the specific  
20 debtor; instead looked to the activities of that debtor  
21 subsidiaries.

22 In Constellation, a number -- the RJ proceeding in  
23 Brazil included the Constellation subsidiaries and affiliates  
24 that were main proceedings in Brazil, and I concluded it was  
25 appropriate to recognize the Luxembourg parent RJ proceeding as

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1 a nonmain proceeding in Brazil. So I think that alone would  
2 satisfy the requirement here to conclude that this foreign  
3 debtor, its Chapter 15 proceeding in -- its proceeding in  
4 Singapore should be viewed as a foreign -- satisfies the  
5 requirements for foreign nonmain proceeding.

6 I think in some case in the future, where this issue  
7 of substantial connection versus the establishment test is more  
8 important, I may choose to address it then, but I think it's  
9 unnecessary to do so now.

10 I do want to make some comments with respect to the  
11 third-party nondebtor releases that are included in the scheme.  
12 So as Mr. Bloom has indicated, first in Metcalfe and Mansfield,  
13 a few years later in other cases and in scheme cases, Avanti,  
14 Cell C Proprietary. Avanti is obviously a UK scheme of  
15 arrangement. Cell C Proprietary, which is a South African  
16 scheme, both including third-party releases. I followed the  
17 law that I had set forth in Metcalfe and Mansfield and Sino-  
18 Forest.

19 Obviously, as I said in Metcalfe, third-party releases  
20 are, let's say, controversial in the United States, certainly  
21 as indicated in the current Purdue direct appeal to the Second  
22 Circuit, the district court, reversing of Judge Drain in  
23 Purdue.

24 The analysis that I made in Metcalfe and Mansfield and  
25 Sino-Forest clearly applies here. I believe that the Chua

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1 declaration and the memorandum of law that's been submitted in  
2 support of recognition, I think clearly establishes -- and  
3 there are certainly no objections that have been filed here --  
4 that in Singapore third-party releases are broadly recognized.  
5 And I think I've commented before in prior decisions that a  
6 scheme would largely fail if the third-party releases could not  
7 be recognized and enforced.

8           So the issue about recognition and enforcement of  
9 third-party releases depends on the law in the foreign  
10 jurisdiction where the proceeding has been pending. As in  
11 Avanti, UK law had well-established that third-party releases  
12 were granted, that their law provided for that. That same was  
13 in Cell C Proprietary. In other cases, Metcalfe and Mansfield,  
14 the issue of the third-party releases had been litigated all  
15 the way up to the Supreme Court of Canada contested. And so  
16 there are many jurisdictions around the world where such relief  
17 is appropriate, and indeed, the scheme or a plan could not  
18 succeed unless that relief was granted.

19           The issue for me, of course, is recognition and  
20 enforcement of a scheme that includes third-party releases.  
21 And I concluded in Metcalfe and Sino-Forest and in other cases  
22 that under Chapter 15 and the application of the comity  
23 doctrine, a Chapter 15 court in the United States has the  
24 authority to recognize and enforce a scheme or a plan approved  
25 in a foreign main or foreign nonmain proceeding that includes

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1 third-party nondebtor releases.

2 So whatever the outcome in Purdue and other cases like  
3 it, I do not believe that alters the analysis or conclusions  
4 that third-party releases can be approved in scheme  
5 proceedings, provided that the court that has sanctioned the  
6 scheme would have the authority. And I think that the brief  
7 that's been submitted here clearly establishes that in  
8 Singapore such relief is appropriate and is given. And so I am  
9 recognizing and enforcing that relief.

10 Again, because no objections have been filed, I will  
11 not go through each of the other requirements for recognition  
12 of a foreign nonmain proceeding and the discretionary relief t  
13 that is being granted here. I have considered each of the  
14 requirements in Chapter 15 for recognition and find that each  
15 is satisfied in the circumstances here. I won't go through  
16 them individually, because no objection has been filed, other  
17 than to say I've taken them all into account in determining my  
18 ruling.

19 And with respect to the relief you're seeking, Mr.  
20 Bloom, for the rapid case closing, I believe that that is  
21 appropriately granted if and when it becomes necessary and any  
22 party wishes, they can seek to reopen the Chapter 15 case. But  
23 I think upon the effective date of the plan become -- the  
24 scheme becoming effective and taking place -- this case can  
25 certainly be closed.

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1 Mr. Bloom, anything else you want to raise?

2 MR. BLOOM: Only to thank the Court again very much.  
3 There has been, primarily to Mr. Solow, significant interaction  
4 on questions that have arisen with Your Honor's chambers, and  
5 we very, very much appreciate all of the assistance that was  
6 provided to us to enable us to get to this point, so that Your  
7 Honor could conduct a smooth hearing as today.

8 THE COURT: And I look forward to the day we can all  
9 be in the same courtroom and do it. Obviously with the parties  
10 in Singapore or Indonesia, I always permit people to appear  
11 either by phone or by Zoom. But I miss the contact with the  
12 lawyers in the case, so I'm pleased that we were able to get to  
13 this result today.

14 Again, thank you, Mr. Bloom, to you and your  
15 colleagues and counsel in Singapore and in Indonesia for an  
16 excellent set of papers, with the result overwhelmingly --  
17 well, obviously an overwhelming vote in support of the plan.

18 And I was interested to hear today, and I wasn't  
19 aware, that the one creditor who filed the proceeding in  
20 Indonesia, which obviously ended, voted in favor of the plan.

21 So again, thank you very much to everybody. And if we  
22 don't -- if you've not yet sent the Word format order to the  
23 Court, I can be emailed to chambers at  
24 mg.chambers@nysb.uscourts.gov, and it'll promptly be entered.

25 MR. BLOOM: That is much appreciated, Your Honor.

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1 That certainly will enable the order to become final so long as  
2 there are no motions for rehearing or notices of appeal well in  
3 advance of our March 31 long stop date.

4 And for the efficiency in administration of the case,  
5 I thank the Court and Your Honor's staff and chambers as well.

6 THE COURT: All right. Thank you very much.

7 We are adjourned.

8 (Whereupon these proceedings were concluded at 10:44 AM)

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I N D E X

E X H I B I T S

DEBTORS'	DESCRIPTION	MARKED	ADMITTED
	Declaration of Mr. Simms		9
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RULINGS:			
	Motion for recognition of the		PAGE LINE
	Singapore proceeding as a	25	18
	nonmain proceeding is granted		

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C E R T I F I C A T I O N

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I, Hana Copperman, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

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*Hana Copperman*

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Date: March 14, 2022

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March 8, 2022

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